



4191-02U

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404 and 416

[Docket No. SSA-2014-0081]

RIN 0960-AH74

Vocational Factors of Age, Education, and Work Experience in the Adult Disability Determination Process

AGENCY: Social Security Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: We are soliciting public input about how we should consider the vocational factors of age, education, and work experience in adult disability claims under titles II and XVI of the Social Security Act (Act). There have been significant changes in technology use and workforce demographics since we first adopted our vocational factor regulations in 1978. We are requesting public comments, along with any supporting data, to assist in our efforts to streamline, simplify, and ensure the ongoing relevance of our disability determination programs.

DATES: To be sure that we consider your comments, we must receive them no later than [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method.

Regardless of which method you choose, please state that your comments refer to Docket No. SSA-2014-0081, so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. Internet: We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at <http://www.regulations.gov>. Use the Search function to find docket number SSA-2014-0081. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. Fax: Fax comments to (410) 966–2830.

3. Mail: Address your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 3100 West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at <http://www.regulations.gov> or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Mary Quatroche, Office of Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 966-4794. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

Background

The Act defines “disability” for titles II and XVI as the “inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.”¹ The Act also states that “[a]n individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), “work which exists in the national economy” means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.”²

We use a five-step sequential evaluation process to determine whether an adult is

¹ 42 U.S.C. 423(d)(1)(A) and 1382c(a)(3)(A); see also 20 CFR 404.1505(a) and 416.905(a).

² 42 U.S.C. 423(d)(2)(A) and 1382c(a)(3)(B).

disabled under the Act.³ If we can make a determination or decision whether a claimant is disabled or not disabled at a step, we do not go on to the next step.⁴ If we cannot make a determination or decision at a step, we continue to the next step in the sequential evaluation process.⁵

The vocational factors of age, education, and work experience are relevant at step 5 when we consider a claimant's capacity to adjust to other work. Specifically, at step 5 we consider whether a claimant's impairment(s) prevents him or her from doing any other work that exists in significant numbers in the national economy, considering his or her residual functional capacity (RFC)⁶ and the vocational factors of age,⁷ education,⁸ and work experience.⁹ If we find that the claimant does not have the capacity to adjust to other work that exists in significant numbers in the national economy, we find the claimant disabled. If we find that the claimant has the capacity to adjust to other work, we find the claimant not disabled. We do not consider an individual's ability to obtain work.¹⁰

To help make our step 5 determination, we use both the medical-vocational profiles (the profiles)¹¹ and the medical-vocational guidelines (the guidelines) when appropriate.¹² The profiles and the guidelines are based on several assumptions:

- We consider aging to be a limiting factor in a person's ability to adjust to other

³ 20 CFR 404.1520(a)(4) and 416.920(a)(4).

⁴ Id.

⁵ Id.

⁶ The RFC is the individual's maximum remaining ability to do sustained work activities in an ordinary work setting on a regular and continuing basis. See 20 CFR 404.1545 and 416.945.

⁷ See 20 CFR 404.1520(a)(4)(v), 404.1563, 416.920(a)(4)(v), and 416.963.

⁸ See 20 CFR 404.1520(a)(4)(v), 404.1564, 416.920(2)(4)(v), and 416.964.

⁹ See 20 CFR 404.1520(a)(4)(v), 404.1565, 416.920(a)(4)(v), and 416.965.

¹⁰ See 20 CFR 404.1566(c) and 416.966(c).

¹¹ See 20 CFR 404.1562 and 416.962 and POMS DI 25010.001.

¹² See 20 CFR Part 404 Subpart P Appendix 2.

work.

- We consider higher levels of education and certain types of recent education to enhance a person's ability to adjust to other work.
- We consider that an individual who has done skilled or semi-skilled work may have acquired skills and abilities from that past work. Those acquired skills and abilities may be transferable to other work. Under our rules, unskilled work does not convey transferable skills to an individual.

What is the purpose of this ANPRM?

We are soliciting public comments along with supporting research and data about how vocational factors such as age, education, and work experience affect an individual's ability to adjust to other work that exists in the national economy. In addition to seeking public input on the specific questions below, we are also asking for public assistance to help identify research and data to assist us.

What will we consider when we decide whether to propose revisions?

We will consider the public comments in addition to other input, research, and data that we obtain through other methods. This ANPRM is one component of the our larger effort to collect information about how we consider the vocational factors of age, education, and work experience when we determine whether an individual can adjust to other work. We commissioned several studies and are examining how the vocational factors influence an individual's ability to adjust to doing new work. For your consideration while preparing your comments to this ANPRM, these studies are included

in the References section of this notice, and are included in the docket folder for this rule at <http://www.regulations.gov>. In addition, we are undertaking outreach efforts to engage federal and private stakeholders, including the scientific community. We will consider the results of these information-gathering efforts collectively when we evaluate how to consider the vocational factors in determining whether an individual can adjust to other work.

What should you comment about?

When we determine whether an individual can adjust to other work, we consider an individual's functional capacities and limitations, the occupational base in the national economy, and the vocational factors of age, education, and work experience. We have ongoing activities related to each of these considerations. Although complementary, our activities related to functional limitations and the occupational base are independent and are occurring on separate timeframes from our effort on the vocational factors.

Accordingly, we are narrowing the scope of this ANPRM to solicit public comments on only the vocational factors. We are not soliciting public comments on how we assess an individual's functional limitations. We are also not soliciting public comments in this notice on sources of occupational data we use at step 5, such as the Dictionary of Occupational Titles, because we are working with the Bureau of Labor Statistics (BLS) to test the collection of updated occupational information that we intend to use to develop a new occupational information system.¹³

¹³ You can find more information on this effort on the BLS website at <http://www.bls.gov/ors/>, and on our website at http://www.ssa.gov/disabilityresearch/occupational_info_systems.html.

Specifically, given today's work environment and advances in technology and medicine, we are seeking public input, research, and data about the following:

1. Is the factor of age predictive in determining an individual's ability to work or to adjust to other work? If it is predictive, what are the vocationally significant age milestones we should consider? If it is not predictive, what data support that assertion?
2. When determining if age affects an individual's ability to work or to adjust to other work, what other factors or combination of factors should we consider?
3. Does an individual's educational level affect an individual's ability to do work or to adjust to other work? If so, how? What data support the conclusion that an individual's educational level does or does not affect an individual's ability to do work or to adjust to other work? How does literacy affect an individual's ability to do work or adjust to other work?
4. Does the skill level of an individual's past work affect his or her ability to adjust to other work? If so, how? What data support the conclusion that the skill level of an individual's past work does or does not affect an individual's ability to do work or to adjust to other work? How does the skill level of an individual's past work considered along with an individual's educational level affect this adjustment?
5. Are there other vocational factors or combinations of vocational factors that we should consider when determining an individual's ability to do work or to adjust to other work?

Will we respond to your comments?

We will consider all relevant public comments we receive about this notice, but we will not respond directly to them. If we decide to propose specific revisions to the vocational factors we consider when we determine an individual's ability to do work or two adjust to other work, we will publish a notice of proposed rulemaking in the Federal Register, and you will have a chance to comment on any revisions we propose.

References

Library of Congress, "Vocational Factors in the Social Security Disability Decision Process: A Review of the Literature" (December 1998).

American Institutes for Research, "The Impact of Age, Education, and Work Experience on Determining Eligibility for Social Security Disability Insurance: A Synthesis of Recent Literature" (2000).

American Institutes of Research, "Investigation of Non-Medical Factors Used in SSA's Medical-Vocational Process: A Research Review of Age, Education, and Skills as Related to SSA's Disability Determination Process" (August 2002).

Mathematica Center for Studying Disability Policy, "Vocational Factors in the Social Security Disability Determination Process: A Literature Review" (July 2014) (available at: http://www.mathematica-mpr.com/~media/publications/pdfs/disability/drc_wp_2014-07_voc_factors_determinations.pdf)

Social Security Administration, Office of Research, Evaluation, and Statistics,
“Evidence Synthesis: The Use of Vocational Factors in the Disability Determination
Process” (September 2014).

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age. Survivors and
Disability Insurance, Reporting and recordkeeping requirements, Social security,

20 CFR Part 416

Administrative practice and procedure, Reporting and recordkeeping requirements, Social
security.

Dated: July 30, 2015.

Carolyn W. Colvin,

Acting Commissioner of Social Security.

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